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Second Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of Expedited
Sunset Review of the Countervailing Duty Order on Cut-to-Length
Carbon Steel Plate from Spain

Summary

We have analyzed the responses of interested parties in the expedited sunset review of the countervailing duty order on certain cut-to-length carbon steel plate (“CTL Plate”) from Spain. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues that we are addressing in this expedited sunset review:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

On July 9, 1993, the Department of Commerce (“the Department”) published in the Federal Register its final determination on certain steel products from Spain. See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain, 58 FR 37374 (“Final Determination”). Further, on August 17, 1993, the Department published its countervailing duty order on certain steel products from Spain, which covered only certain cut-to-length carbon steel plate from Spain.¹ See Countervailing Duty Order: Certain Steel Products

¹ Subsequent to the Department’s determination on July 9, 1993, the International Trade Commission (ITC), in accordance with section 705(d) of the Act, notified the Department of its final determinations regarding each of the two classes or kinds of merchandise covered in these investigations. The ITC determined that imports of certain cut-to-length carbon steel plate from Spain were materially injuring a U.S. industry. The ITC also determined that a U.S. industry was not materially injured, or threatened with material injury, by reason of imports of certain cold-rolled carbon steel flat products from Spain.

from Spain, 58 FR 43761. In the Final Determination, the Department determined a total net countervailable subsidy of 36.86 percent ad valorem for all exporters of CTL Plate from Spain, based on programs found to benefit Spanish producers and exporters of subject merchandise.

There were no reviews conducted between the original investigation of the CVD order and the initiation of the first sunset review. The Department published its final results of the first sunset review, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”) on April 7, 2000. See Cut-to-Length Carbon Steel Plate from Spain; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18307 (April 7, 2000) (“First Sunset Review”). In that review, the Department determined that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies at the same rate as found in the final determination of the investigation. As a result, pursuant to 19 CFR 351.218 (e)(4), the Department published a notice of continuation of the order, based on the Department’s and the ITC affirmative findings. See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

Since the publication of the notice of continuation in the First Sunset Review, no administrative reviews, scope clarifications, circumvention determinations or changed circumstances reviews of the CVD order have been conducted. However, the Department has conducted two proceedings pursuant to Section 129 of the Uruguay Round Agreements Act (URAA). See Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from Spain (“First Section 129 Review”), from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 24, 2003; and Second Section 129 Determination on the Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Spain (“Second Section 129 Review”), from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated May 26, 2006. The First Section 129 Review was pursuant to a WTO ruling that found the Department must modify its privatization methodology and apply that revised methodology to the First Sunset Review. The Department modified its methodology but determined it unnecessary to reach the privatization issue in the First Section 129 Review in view of its conclusion on recurring, non-allocable subsidies. The WTO, however, disagreed and directed the Department to conduct a second 129 proceeding to apply its modified privatization methodology.

In the Second Section 129 Review, the Department determined that the privatization of Aceralia did not extinguish the non-recurring, allocable subsidies provided to Aceralia prior to its privatization. The Department further determined that it had been provided substantial evidence that demonstrated the termination of programs under Royal Decree 878/81 that were originally found countervailable in the investigation. However, because countervailable programs continued to exist, the Department determined that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy. Further, the Department found that certain benefit streams from previously bestowed non-recurring subsidies

continued past the end of the sunset period.

Background

On November 1, 2005, the Department published the notice of initiation of the second sunset review of the CVD order on CTL Plate from Spain, pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 70 FR 65884 (November 1, 2005) (“Initiation of Second Sunset Review”). The Department received notices of intent to participate from IPSCO, Inc., Mittal Steel USA ISG, Inc., Nucor Corporation, Oregon Steel Mills, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (“USW”) (collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i).² Domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as U.S. producers of CTL Plate in the United States, and as a certified union or recognized group of workers engaged in the manufacturer, production or wholesale of CTL steel plate in the United States.

On November 30, 2005, the Department received a substantive response from domestic interested parties within the deadline specified in section 19 CFR 351.218(d)(3)(i).³ We did not receive any responses from any respondent interested party to this proceeding. In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), the Department notified the ITC that respondent interested parties provided inadequate response to the Notice of Initiation of Five-Year (“Sunset”) Reviews.⁴ As such, the Department has conducted an expedited sunset review of the CVD order, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and 19 CFR 351.218(e)(1)(ii)(C)(2).

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995, the effective date of the Uruguay Round Agreements Act), as is the case in this proceeding. The Department determined that the sunset review of the CVD order on CTL Plate from Spain is extraordinarily complicated; therefore, in accordance with section 751(c)(5)(B) of the Act, the Department extended the time limit for completion of the final results of this review until no later than May 30, 2006. See Cut-to-Length Carbon Steel Plate from Brazil and Spain: Extension of Time Limits for Final Results of Expedited Five-year (“Sunset”) Reviews of Countervailing Duty Orders; 71 FR 7018 (February 10, 2006).

Discussion of the Issues

² Mittal, IPSCO, and Oregon Steel Mills note that they were the petitioners or successors to petitioners in the investigation and have participated in subsequent reviews before the Department.

³ On December 1, 2005, the Department received a letter from domestic interested parties concerning an amendment to their November 30, 2005 substantive response to the Department’s notice of initiation of the sunset review on CTL Plate from Spain. In that letter, domestic interested parties added USW to the November 30, 2005 substantive response.

⁴ See December 21, 2005 letter to ITC, Robert Carpenter, Director of Investigations, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, Import Administration.

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“SCM”).

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Domestic interested parties argue that revocation of the CVD order on CTL Plate from Spain would likely lead to the continuation or recurrence of a countervailable subsidy. Domestic interested parties state that the net countervailable subsidy rate of 36.82 percent established in the original investigation was increased to 36.86 percent in the first sunset review. Further, no administrative reviews or changed circumstances review have been conducted to date.

Although domestic interested parties did not discuss programs, they argue that shipments of CTL Plate to the United States decreased dramatically following the imposition of the CVD order. Furthermore, they note that since the first sunset review, import levels of the subject merchandise remain at relatively low levels. Domestic interested parties believe that the imposition of the CVD order has had an effect on shipments of CTL Plate to the United States. Therefore, they argue that the order should not be revoked.

Department's Position

In their substantive response, domestic interested parties do not discuss specific programs that provided countervailable subsidies. Instead, they argue that import volumes of CTL Plate from Spain declined following the imposition of the CVD order. Moreover, they argue that imports of CTL Plate to the United States from Spain have stayed at low levels since the first sunset review. While the domestic interested parties’ discussion of the CTL steel plate shipment levels after the imposition of the CVD order is informative, the statute does not require the Department to consider such import levels for purposes of determining the likelihood of continuation or recurrence of a countervailable subsidy.

The Department makes its likelihood determination, (i.e., of whether revocation of the order is likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC. See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826 (1994) at 56.

There was no participation in this review by any of the respondent interested parties. Further, except as noted below, the facts available to the Department indicate that the subsidy programs previously found countervailable continue to exist. Consequently, the Department finds that a countervailable subsidy is likely to continue or recur in the event that this countervailing duty order were revoked.

There have been no administrative reviews of this order since the first sunset review and no evidence has been submitted to the Department in this proceeding that demonstrates the termination of the countervailable programs. However, we have taken into consideration the results of the Second Section 129 Review regarding the first sunset review which also addressed the likelihood of continuation or recurrence of countervailable subsidies for the same period. In that determination, although the Department concluded that the revocation of the order would likely lead to continuation or recurrence of countervailable subsidies, the Government of Spain (“GOS”) did establish and the Department recognized the termination of various types of assistance given under the Royal Decree 878/81. See Second Section 129 Review.

2. Net Countervailable Subsidy Likely to Prevail

The domestic interested parties argue that the magnitude of the net countervailable subsidy rate likely to prevail is equal to or greater than the rate determined to exist in the original investigation. Therefore, they argue that the rate provided to the ITC should be equal to or greater than that established in the original investigation as the net countervailable subsidy likely to prevail if the CVD order were revoked.

Department’s Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation, as the subsidy rate likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. See SAA at 890, and House Report at 64. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a net countervailable subsidy rate based on the “Country-wide” rate determined in the investigation.

In the investigation, we found that the GOS provided countervailable subsidies to producers of the subject merchandise. Since that time, in the absence of administrative reviews, the net countervailable subsidy rate has remained unchanged.⁵ We have, however, taken into account our findings in the Second Section 129 Review. See 752(b)(1)(a) of the Act. As such, we disagree with domestic interested parties concerning the net subsidy rate likely to prevail if the CVD order were revoked. We have removed from the overall rate the benefits arising from assistance under Royal Decree 878/81. Therefore, because there is no evidence of any other

⁵ The net countervailable subsidy rate published in the Final Determination was 36.86 percent and has remained unchanged since. The Department notes that the rate published in the order of CTL Plate was erroneously stated as 36.82 percent.

changes to any of the Spanish subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 33.68 percent ad valorem. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rate below in the section entitled “Final Results of Review.”

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). We note that Article 6.1 of the ASCM expired effective January 1, 2000.

In the instant review there were no programs that fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions:

1. Law 60/78: This law, limited to the steel industry, appropriated fifteen billion pesetas to the budgets of the Ministry of Industry and Energy and INI in a set of emergency measures in 1978 in support of the steel industry. In 1979 under this law, Ensidesa received “Long-Term Loans from the Bank of Industrial Credit (BCI)” despite the fact that the Department found it uncreditworthy, and “Equity Infusions from INI,” when INI paid more than the average market price for Ensidesa’s stock.⁶

2. The 1984 Council of Ministers Meeting: In 1984, the Council of Ministers approved labor and financial plans included in the steel reconversion package. These were plans to adopt a series of industrial measures for reconversion and restructuring of the production installations of integrated steel companies. The GOS provided Ensidesa with (1) “Equity Infusions,” (2) “Loan Guarantees,” (3) a “Share Issue Premium,” and (4) “Grants Provided to Decrease Financial Charges and to Compensate for Losses.”

3. The 1987 Government Delegated Commission on Economic Affairs: Protocol 10 of Spain’s Treaty of Accession to the European Communities, stipulated that the European Commission and the GOS would evaluate the implementation of the reconversion plans already approved by the GOS. The actions of the Government Delegated Commission for Economic Affairs provided for the additional new measures authorized by the EC in March 1987. The following benefits were provided to Ensidesa, pursuant to the 1987

⁶ Prior to the First Sunset Review, the GOS restructured Ensidesa, conveying some of its assets and liabilities to CSI Planos, which was subsequently renamed Aceralia.

Delegated Commission: (1) “Deferral of Social Security and Other Tax Obligations,” (2) “Grants,” and (3) “Fund for Employment Promotion and Early Retirement.”

4. Contributions Made to INI Special Finance Accounts: These special financial contributions were given by INI to compensate Ensidesa for its previous years’ losses. Because INI had no expectation of return either in the form of dividends or capital appreciation, the Department considered them to be grants. In 1984, in particular, Ensidesa offset reductions in the capital share account and the accumulated loss account by converting almost all of the INI special financing reflected on the books into a new share capital.

5. ECSC Article 54 Loans and Loan Guarantees: “Article 54 Industrial Investment Loans,” which are only available to the iron and steel industry, are provided for the purpose of purchasing new equipment or financing modernization. Article 54 loans are direct loans from the EC which are loaned at a slightly higher rate than that at which the EC obtained them in order to cover its costs.

Final Results of Review

The Department finds that revocation of the CVD order on CTL Plate from Spain would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Producer/Exporter	Net subsidy rate (percent)
All Producers/Exporters	33.68

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date